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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2025

CORAM:

THE HONOURABLE DR. JUSTICE **G.JAYACHANDRAN**  
and  
THE HONOURABLE MR. JUSTICE **MUMMINENI SUDHEER KUMAR**

O.S.A.(CAD) No.134 of 2025  
and  
C.M.P.Nos.29678 & 29679 of 2025

M/s.Saravana Selvarathinam  
Dairy Division,  
Rep by its Proprietor S.Saravana Arul,  
No.33, Ranganathan Street,  
T.Nagar, Chennai - 600 017

.. Petitioner

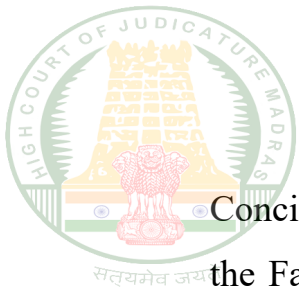
Vs.

1.M/s.Nivjer Infrastructure  
Rep. by its Chief Executive R.Vincent Raju,  
No.44A, Old No.22, 18th Avenue,  
Ashok Nagar, Chennai - 600 083.

2.The Chairman,  
Micro Small Enterprises Facilitation Council,  
Chennai Region,  
O/o The Director of Industries and Commerce,  
Behind Ezhilagam, Chennai 5

.. Respondents

**PRAYER:** Original Side Appeal is filed under Section 13 of the  
Commercial Courts Act read with Section 37 of the Arbitration and



Conciliation Act Order XXXVI Rule 9 of the O.S.Rules, praying to set aside the Fair and Decreetal order passed by the learned Judge in O.P.No.481 of 2009, dated 03.11.2025 and allow the present appeal.

For Petitioner : Mr.G.Karthikeyan, Senior Counsel  
for Ms.A.Jagadeeswari

For Respondents : Mr.Mohamed Unaisullah

Mr.M.Appaji Charles Kamalesh  
(Time expired)

### **ORDER**

[Order of the Court was made by Dr.G.JAYACHANDRAN., J.]

The Original Side Appeal, filed under Section 37 of the Arbitration and Conciliation Act, challenges the order passed by the learned Single Judge, in exercise of power under Section 34 of the Act, confirming the arbitration award dated 10.06.2010.

2. The learned Senior Counsel appearing for the appellant submitted that there was a gross violation of the principles of natural justice, which is apparent on the face of the record and was considered by the learned Single Judge while exercising power under Section 34 of the Arbitration and Conciliation Act. According to him, the dispute between the appellant and the 1<sup>st</sup> respondent has been pending since 2009. In the earlier

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round of litigation, the matter was remanded back to the Arbitrator for fresh consideration after affording opportunity to the parties. However, the Arbitrator even without notice or affording opportunity, passed the award dated 10.06.2010. When this was brought to the notice of the learned Single Judge, under Section 34 of the Act, the learned Single Judge called for records of the Arbitration. The Regional Joint Director of Industries and Commerce, MSE Facilitation Council, Chennai Region, Chennai-32, in response to the Court direction, informed the Court that none of the documents were traceable even though effective steps were taken to trace the records and that many documents were lost during the floods in 2015.

3. After receiving the communication, the learned Single judge proceeded with the petition and presumed that the observations made in the impugned award were suffice to presume that an opportunity had been given to both parties and the principles of natural justice had been duly complied.

4. The learned Senior Counsel contended that this observation is patently perverse and illegal, when there is a specific allegations that no opportunity was given before passing the award that too when, in the earlier

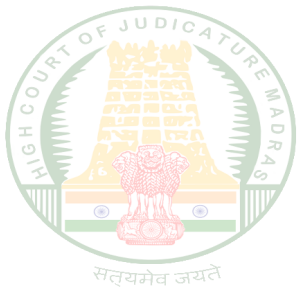


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round of litigation, the High Court had intervened the award and directed the Arbitrator to give an opportunity to the parties. The learned Single Judge, on the basis of presumption, could not have upheld the validity of an arbitration award, which was passed without affording an opportunity in a gross violation of the principles of natural justice.

5. The learned Senior Counsel drew the attention of this Court to the following passage in the award and to paragraph 13 of the learned Single Judge, which reads as below:-

*“As ordered by the Hon’ble High Court, parties were given opportunities to put forth their view/documents. It is seen that the respondent by his letter dt.19.8.2002 has accepted the offer of the petitioner for “the supply, erection and commissioning of refrigeration Plant as per your offer at a total cost of Rs40,00,000/-”. By his letter dt.18.8.2002, the petitioner has submitted the final proposal with technical specification, price schedule, general terms and conditions, terms and conditions for erection and commissioning of Plant and Machinery. Again the petitioner, by his letter dated 24.06.2003 and 12.12.2003, have sent*



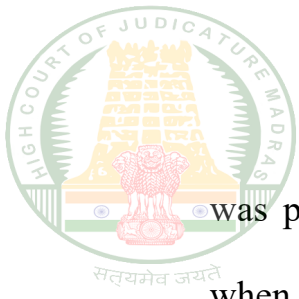
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*'Variation Order Form'. This change is allegedly "as per purchaser's modified requirements". Many invoices and delivery challans have also been filed. The delivery challans bear the signature/initial of both the parties. Of course respondent would submit that the respondent has not signed and those found on the delivery challan are forged."*

*13. In order to ascertain as to whether the petitioner was given an opportunity before the second respondent, this Court called for the records from the second respondent. Pursuant to that, a communication dated 22.10.2025 was received from the Regional Joint Director of Industries and Commerce, MSE Facilitation Council, Chennai Region, Chennai-32 to the effect that none of the docuemnts was traceable even though effective steps were taken to trace the records and that many documents were lost during the floods in 2015."*

6. When the matter came up for consideration on 27.11.2025, from the Registry record, we find that one Mr.Appaji Charles Kamlesh name

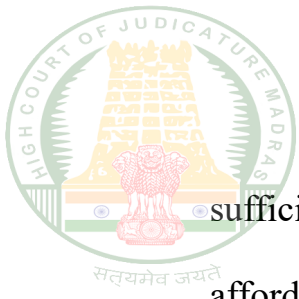


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was printed in the cause list and the matter was posted before us. Today, when the matter is taken up for consideration, Mr. Mohamed Unaisullah appeared before this Court and stated that he has now filed a caveat petition in the Registry on behalf of the respondents, which is yet to be numbered. When we asked about the participation of the parties in the arbitration proceedings subsequent to the remand, he is unable to provide clarity.

7. The learned counsel for the respondents submitted that the documents produced by the respondents had been perused by the Arbitrator and were discussed in the award. However, from the discussion of the arbitrator, we find nothing to infer that the documents referred to in the above mentioned paragraph were produced and available during the arbitration proceedings, when the very same documents could not be furnished before he learned Single Judge upon being called for. The learned counsel further reported that those documents had been lost during the floods in 2015.

8. In the said circumstances, we are of the view that there is an apparent violation of the principles of natural justice. Unless and until,



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sufficient material is placed before us to establish that an opportunity was afforded to the parties, as directed by this Court in the earlier round of litigation, the award impugned cannot be sustained. The learned counsel who appears for the respondents is, therefore directed to produce records, if any, to substantiate the observation of the arbitrator regarding opportunity given to the parties.

9. Pending further orders, there shall be an order of stay of the impugned award until further orders.

**[Dr.G.J., J.] & [M.S.K., J.]**  
**28.11.2025**

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**and**  
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